

In Texas there are different types of educational programs and settings related to K-12 education that have a residential component. There are nonpublic residential programs and residential facilities (RF) that fall under Texas Education Agency (TEA) jurisdiction in some manner. To clarify:

A **nonpublic residential program or school** supports students with disabilities who for educational reasons have been placed for educational and residential purposes via an admission, review and dismissal (ARD) committee determination at the nonpublic residential program or school. Through an individual education plan (IEP) process, an ARD committee may make the determination that a student requires placement in a nonpublic day or nonpublic residential placement to meet their educational needs.

A **nonpublic day school** is a private school or facility that supports students with educational needs that cannot be met in a public school setting. This placement is determined by an ARD committee. Nonpublic day schools do not provide residential programs. Instead, local education agencies (LEAs) provide transportation to students attending these schools.

A **residential facility (RF)** or a residential treatment center (RTC), supports students 22 years of age or younger who reside in the facility for detention, treatment, foster care, or any non-educational purpose providing 24-hour custody or care of students. RTCs are required to offer access to educational programs and are denoted as RF in ASKTED and within TEA systems. For the Texas Education Agency, RF and RTC are the same.

Both general education and special education students can be placed in RF settings. TEA provides guidance for the educational components provided by RFs. However, the RF operates the residential services under the licensure of another state agency such as Health and Human Services or the Department of Corrections.

LEAs are required to serve students with disabilities residing in RFs located within the LEAs' geographic boundaries and/or jurisdictions. Some charter schools operate campuses within RFs. The Commissioner and the TEA have jurisdiction over these educational entities.

Guidance

On March 19, 2020, Governor Abbott issued an [executive order](#) providing that "schools shall temporarily close" beginning 11:59 p.m. on March 20, 2020, until April 3, 2020. On March 31, 2020, Governor Abbott issued another [executive order](#) that schools remain closed and not recommence before May 4, 2020. These orders are applicable to school services provided at both nonpublic residential schools or programs and residential facilities, with the following considerations:

- Above all, prioritize the health and safety of students, staff, and communities.

- Traditional brick and mortar “school” programs and school services under the Governor’s executive orders must close. However, nonpublic residential schools or programs and residential facilities can maintain the residential components of their programs. This will allow students in these programs to remain in the residential units during the school closure.
- Residential facilities and nonpublic residential units operating while school programs are closed are expected to follow the guidance provided by [Health and Human Services](#).
- For students with disabilities, LEAs should reference the [COVID-19 and Special Education Q&A](#)

Frequently Asked Questions

1. Do the Governor’s executive orders apply to nonpublic day schools? *Posted March 22, 2020*

Yes. Nonpublic day schools are considered “schools” in the executive orders issued by Governor Abbot. As such, LEAs should work to notify families of school closures in effect until May 4, 2020. LEAs electing to provide instructional services through alternative means during school closures must plan for and provide the provision of a free and appropriate public education (FAPE).

2. What if a nonpublic residential program closes operations completely due to COVID-19? *Posted March 22, 2020*

LEAs should be in communication with their contracted facilities and families to formulate plans in the event of full facility closure. Additionally, plans should be made for instructional continuity for these students during closure.

3. What if a residential facility (RF) closes the facility completely due to COVID-19? *Posted March 22, 2020*

The RF should be in communication with its licensing agency to determine next steps and make appropriate plans. Again, guidance provided by the Department of Health and Human Services should be followed should the facility close. Campuses operating within the RF will need to take measures to provide for the instructional continuity for its students during closure.

4. What should an LEA do regarding transportation of students if the LEA is closed but a nonpublic day school is open? *Posted March 22, 2020*

As of 11:59 p.m. on March 20, 2020, as detailed in the Governor’s order, “schools” were ordered to close their brick and mortar programs, which included nonpublic day programs. LEAs are not required to provide transportation while they are closed. However, LEAs that are providing education through virtual or other means to students while closed must provide FAPE for all students with disabilities, including those in nonpublic day settings. LEAs should consult the TEA COVID-19 Special Education Q&A regarding FAPE. This Q&A can be found on the [TEA Coronavirus \(COVID-19\) Support and Guidance website](#), under SPED and Special Populations.

5. Would the residential restriction also apply to Texas School for the Deaf (TSD) or Texas School for the Blind and Visually Impaired (TSBVI)? *REVISED April 7, 2020*

Yes, the Governor's executive orders closing schools until May 4, 2020, apply to all brick and mortar school programs, including school programs provided by TSD and TSBVI. **Both TSD and TSBVI are providing instructional continuity, resources and support for the provision of FAPE for their students.** LEAs should consult the TEA COVID-19 Special Education Q&A regarding FAPE.

6. What is the expectation of a residential facility if the student is returning from an out-of-state visit/break? *Posted March 22, 2020*

Facilities should work with the contracting LEA and their respective licensing authorities. School districts have the right to control and restrict access to campuses. School districts and charter schools should consult with their local health authorities and incorporate any guidance provided by the local health authorities into their decision on whether to permit a student or staff member access to public school facilities. Title 25, Texas Administrative Code (TAC), Sec 97.7, articulates the discretion a school administrator has when a child has or is suspected of having a communicable condition. This issue is addressed on a case-by case basis.

7. My residential treatment center (RTC) uses a different structure than traditional schools. What process should we consider? Can we have teachers on campus and just not interact with students? Is an RTC exempt from the prohibition on in-person educational services? *Posted March 26, 2020*

Per the Governor's orders, school buildings, where students congregate together, are to close. Schools must commit to supporting students instructionally while absent from the school grounds.

For some RTCs, students are housed on the broader school grounds. So remote instructional support could look different. Instruction must be completed where students and teachers are not congregating together in groups. Facility staff should maximize social distancing while supervising students accessing remote instruction. Note: RTCs must consider the needs of students with disabilities while provide remote instruction. Please see the COVID 19 Special Education Q&A on the [TEA Coronavirus \(COVID-19\) Support and Guidance](#) webpage, under SPED and Special Populations, for guidance on ARD requirements which remain in place.

With regard to teacher access to the school campus and classrooms, RTCs would be no different than other schools. Under Governor Abbott's March 31, 2020 order, teachers and other staff can continue to have physical access to the school to support distance learning and food assistance programs but should do so in very small numbers at any one time to

maximize social distancing. Any related matters arising from local shelter-in-place orders should be addressed with the local authorities issuing such orders.

8. **We currently have students in non-public day and residential placements who under the governor's order are not attending school in facilities. Residential students are residing at the facility. The non-public day and residential schools are providing some educational services to students. Can the non-public day and residential programs still bill the district for the full placement cost during this time? How should we track attendance?** *Posted April 9, 2020*

LEAs who have students in residential and non-public day schools are responsible for ensuring that their students are provided FAPE to the extent possible. LEAs must make a reasonable effort to implement the special education and related services defined in the IEP. When school resumes, ARD committees should address student-specific needs resulting from the closure. This might include discussions compensatory education and extended school year (ESY) services made on a case-by-case basis. Any need for compensatory services related to school closure or inability to fully implement a student's IEP will be addressed by ARD committees after school closures end. LEAs should make a reasonable effort to hold meetings, stay in compliance, and document communication with parents/guardians. Additionally, the LEA should document any agreements which allowed for flexibility during the COVID-19 response.

LEAs should work with nonpublic providers and review contract terms to determine billing and associated costs for services during this time. Through a discussion of the contract terms and services currently being provided, the LEA should determine what is and what is not billable during this time.

The LEA should refer to the [Student Accounting and Attendance Handbook](#) as well as any local board policies regarding attendance tracking.

9. **Will high cost funds (HCF) be based on what would have been expended or only what has been incurred?** *NEW April 23, 2020*

High Cost Funds help offset the financial impact on LEAs that provide educational services to high-need children with disabilities. This is determined by costs of educating a student that exceeds three times the average per pupil expenditure (APPE). HCF cover only costs identified in the child's Individualized Education Program (IEP) and associated with providing direct special education and related services. It is a reimbursement of costs, so if monies paid by the state to an LEA are not expended as planned in accordance with the IEP they should be returned to TEA. The due date per this [Errata](#) is now 5/15/2020.

Revised
4/23/2020